

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-2511-1989(O&M)

Reserved on:-26.4.2023

Date of Pronouncement:-4.5.2023

Darshan Singh (deceased) represented through his LR's and another
...Appellants

Versus

Des Raj (since deceased) represented through his LR's

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.S. Swaich, Advocate
for the appellants.

Mr.Namit Gautam, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Des Raj had filed a suit for possession (constructive) by way of specific performance of agreement to sell dated 6.6.1970 by defendant Dalip Singh (since dead) now represented by his LR's with regard to the agricultural land measuring 10 kanals 15 marlas situated at village Buthgarh, Tehsil and District Ludhiana, after getting executed the pre-emption decree dated 30.4.1970 passed by Sub Judge Ist Class, Ludhiana in favour of the defendant in the civil suit titled "Dalip Singh Versus Gurinder Lal and others" and after getting his name entered in the revenue record as owner and to recover the land in suit

in favour of the plaintiff.

2. After contest the civil suit was dismissed by Sub Judge Ist Class, Ludhiana vide judgment and decree dated 10.10.1986 mainly for the reason of suit being barred by time.

3. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Ludhiana, which was assigned to Additional District Judge, Ludhiana, who vide judgment and decree dated 4.8.1989 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff granting him a decree for specific performance of agreement to sell dated 6.6.1970, issuing a direction to the defendant to execute and register the sale deed of the suit land in terms of that decree in favour of the plaintiff within three months from the date of decree. It was observed that the entire sale consideration already stands paid.

4. Being dissatisfied with the judgment and decree passed by Additional District Judge, Ludhiana, the LRs of defendants have filed the present regular second appeal before this Court, notice of which was given to respondent/plaintiff, who had put in appearance through counsel.

5. I have heard learned counsel for the parties besides going through the record.

6. It may be mentioned here that the trial Court while giving

issue-wise findings has decided issue No.1 holding that the suit was filed much beyond the period of limitation prescribed by law. Whereas issue No.2 was decided in favour of the plaintiff against the defendant finding that the suit was maintainable. Issue No.3 was decided in favour of the plaintiff against the defendants holding that suit was not bad as mentioned in preliminary objection No.2 of the written statement. Issue No.4 was decided against the defendant in favour of the plaintiff holding that the plaintiff was not estopped from filing the suit by his act and conduct. Issues No.5 and 6 were decided observing that as the suit had been found to be time barred, the plaintiff was not entitled to any relief.

7. Now the main question before learned Additional District Judge, Ludhiana was whether the suit was time barred or not with respect to issue No.1. Learned Additional District Judge, Ludhiana has found that the suit in question being for grant of specific performance of contract of sale was covered by Article 54 of the Limitation Act, which provided period of limitation as three years. The starting point of limitation was the date fixed for the performance and if no such date was fixed, when the plaintiff had noticed that the performance had been refused. Referring to the agreement to sell Ex.P1, it has been observed that the defendant had obtained the suit land from Gurinder Lal and others through a pre-emption decree and as per terms of the agreement, the defendant

would execute and gets registered the sale deed and obtain actual possession of the suit land by execution of pre-emption of decree through the Court and put the plaintiff in actual possession within 15 days, failing which, the plaintiff would be at liberty to get the sale deed executed through agency of the Court. That shows that intention of the parties was that defendant would execute and register the sale deed and deliver possession of the suit land to the plaintiff within 15 days of his having received possession through the Court by execution of pre-emption decree, which was not definite or precise. Therefore, no specific or definite date had been fixed in the agreement Ex.P1 for performance. In that way, the suit was not covered by the first part of column No.3 of Article 54 of the Limitation Act but by second part, therefore, the starting point of limitation was when the plaintiff had noticed that defendant had refused performance. Reference to receipt Ex.P2 dated 5.1.1971 was also made wherein the defendant/executant had clearly stated that he would execute the sale deed in favour of the plaintiff one month after the settlement of his litigation with Gurinder Lal. The version of the plaintiff that he had taken the actual possession of the suit in Kharif 1978 under agreement of sale was found to be corroborated by entries in jamabandi for the year 1982-83 Ex.P4 and khasra girdawari from Kharif 1983 to Rabi 1986. While counting the date when the starting point of limitation began, learned Additional District Judge,

Ludhiana has observed that the documents on the record show that it was only when the defendant filed written statement to his suit for mandatory injunction did the cause of action accrue to the plaintiff because it was at that time he had noticed that defendant had refused performance. As such, it was found within limitation. A specific finding has been given that plaintiff has throughout been and still ready and willing to perform his part of contract but the defendant had breached the same, therefore, the plaintiff was entitled to decree for specific performance. With it being proved on record that defendant had taken the possession giving it to the plaintiff, learned Additional District Judge, Ludhiana found that it was not necessary for the defendant to get the decree of pre-emption executed and to get the mutation sanctioned in his favour.

8. No reason is found to differ with such observations made by the First Appellate Court and to take a contrary view in light of the facts and circumstances of the case.

9. No substantial question of law or fact arises in this appeal.

10. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Ludhiana.

11. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

4.5.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No